Supreme Court, U.S.
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No. 98-674

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1998

MICHAEL BOWERSOX,
Superintendent, Potosi Correctional Center
Petitioner,

v.

HEATH ALLEN WILKINS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF

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The Petition for Writ of Certiorari is Not Moot

On October 13, 1998, Superintendent Michael Bowersox filed his Petition for a Writ of Certiorari. Petitioner seeks review of the judgment of the court below on June 8, 1998, affirming the grant of Respondent's Wilkins' application for writ of habeas corpus (App. 1).

On May 15, 1996, the District Court ordered that the conditional writ "shall become unconditional and permanent unless the State of Missouri allows petitioner to withdraw his plea of guilty and commences proceedings to afford [respondent] a trial within sixty days of the date of this order." (App. 94). On September 1, 1998, the United States Court of Appeals for the Eighth Circuit denied Petitioner Bowersox's motion to stay issuance of the mandate pending the filing of the petition for writ of certiorari (see Appendix to Opposition to Petition for Writ of Certiorari -- hereafter "Opp. App." -- at 10).

In order to comply with the Order and Judgment of the District Court, respondent was permitted to withdraw his guilty pleas on October 30, 1998 (see Opposition to Petition for Writ of Certiorari -- hereinafter "Opp." -- at 10), i.e., within sixty days of the issuance of the mandate of the court below.

Respondent contends that as a result of the State's compliance with the District Court's Order and Judgment, "the issue which petitioner wants this Court to address is moot." (Opp. 11). To the contrary, as stated in Calderon v. Moore, 116 S.Ct. 2066, 2067 (1996), "a decision in the State's favor would release it from the burden of the new trial itself." Further,

respondent advocates an impossible choice: either the State comply with the federal court order and forfeit its right to enforce the state criminal laws by seeking review on a writ of certiorari or, to otherwise preserve the State's right, flagrantly disregard the authority of the federal judiciary.

Respondent also contends that, because he relied in part upon state law in his motion to withdraw his guilty pleas, that jurisdiction is accordingly frustrated (Opp. 12). The state court, however, in its order (see Opp. App. 6), did not rest on a state law ground independent of the federal question and adequate to support the judgment. See Coleman v. Thompson, 501 U.S. 722, 729 (1991). And in addition to his repeated citation to the decision of the court below in his "Motion to Withdraw Guilty Plea," (Opp. App. 1-3), respondent further argued before the state court that "an order allowing defendant to withdraw his pleas is necessary to comply with the mandate of the Eighth Circuit Court of Appeals." (Opp. App. 3).

Conclusion

WHEREFORE, Superintendent Bowersox prays the Court for its order issuing a writ of certiorari and reversing the judgment of the court below.

Respectfully submitted,

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